



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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September 7, 2004

REGISTERED MAIL

Washington State Department of Transportation
Linea Laird
3214 50th Court NW #302
Gig Harbor, WA. 98335

RE: Water Quality Certification Order No. 1649 for Corps Public Notice No. 200400455. The Toliva Shoals Mitigation Project is a fish enhancement project to create artificial habitat structures for rockfish in and adjacent to southern Puget Sound, in Pierce County, Washington

Dear Ms. Laird:

The public notice from the U.S. Army Corps of Engineers for proposed work in or near Puget Sound, Pierce County has been reviewed. On behalf of the State of Washington, we certify that the work proposed in the application for Department of Army permit, and Corps public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the applicant's determination that this work is consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

If you have any questions, please contact Kerry Carroll at (360) 407-7503. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenden McFarland", is written over a horizontal line.

Brenden McFarland, Supervisor
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

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BF:kc

Enclosure

cc: Anchor Environmental – Holly Mergler
 WSDOT- Dave Davies
 Tacoma Narrow Constructors- Chris Nichols
 Corps of Engineers –Sandra Manning
 Ecology, Shorelands - Kim Vanzwalenburg
 Ecology, SWRO – Margaret Hill
 WSDFW – David C. Molenaar
 DNR- Lindie Schmidt
 Ecology, HQ – Penny Keys
 Ecology, HQ- Yvonne Oliva

IN THE MATTER OF GRANTING)
A WATER QUALITY)
CERTIFICATION TO)
Washington Department of Transportation)
in accordance with 33 U.S.C. 1341)
FWPCA § 401, RCW 90.48.260,)
RCW 90.48.120 and WAC 173-201A)

ORDER # 1649

(Corps No. 200400455)

Construction of artificial habitat structures
for rockfish.

TO: Washington State Department of Transportation
Linea Laird
3214 50th Court NW #302
Gig Harbor, WA. 98335

On August 5, 2004 a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA§ 401).

This is a fish enhancement project as mitigation for deepwater impacts from the new Tacoma Narrows Bridge Project. Toliva Shoals is aquatic land located within the Puget Sound. The proposed project entails placement of 2,637 cubic yards of quarry rock over about one acre at four locations, ranging from -20 to -70 feet MLLW to create artificial habitat structures for rockfish in Toliva Shoals. The proposed project is located in the Puget Sound, 5.2 miles south of the Tacoma Narrows Bridge in Section19, Township 20North, Range 02East, Pierce County.

For purposes of this Order, the term "Applicant" shall mean the Washington State Department of Transportation (WSDOT) and its agents, assigns, and contractors.

Work authorized by this Order is limited to the work described in the JARPA and the Corp's Public Notice.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, RCW 90.48.260 and RCW 90.48.120, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 302, 303, 306, and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other

appropriate requirements of state law; and,

3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

In view of the foregoing and in accordance with 33 U.S.C. 1341, 90.48.260 RCW, 90.48.120 RCW and Chapter 173-201A WAC, certification is granted to the WSDOT Olympic Region subject to the following conditions:

A. Water Quality Standard Conditions:

1. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (173-204 WAC). Water quality criteria contained in 173-201A-030(1) WAC and 173-201A-040 WAC shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in 173-201A-110(3). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
2. Per WAC 173-201A-110(3), a temporary turbidity mixing zone is allowed immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. Under no circumstance shall the following standard be exceeded within a 150 foot radius of the activity causing the turbidity.
 - a. 5 NTU over background when the background turbidity is 50 NTU or less; or
 - b. have more than a 10 percent increase in turbidity when the background is more than 50 NTU.

B. TIMING:

1. This Order is valid only during construction of this project.
2. In-water work is subject to a fishery closure window described in Washington State Department of Fish and Wildlife's (WDFW) Hydraulic Project Approval (HPA). All in-water work shall be completed by November 15, 2004 or the work window identified in the most current HPA issued for this project.

C. Notification Conditions:

1. Notification shall be made to Kerry Carroll via e-mail (preferred), kstr461@ecy.wa.gov or fax (360-407-6902) for the following activities:
 - a. at least three (3) business days prior to the onset of any work authorized by this Order,
 - b. within two (2) business days after the completion of the project.
 - c. immediate notification via phone (360-407-7503) any time a violation of the state water quality standards or an activity that is not authorized through this Order occurs.
 1. Follow up with a written report within seven (7) business days that provides the details of the violation or unauthorized activity, including the following:
 - Date, time and location of the violation
 - What the violation was and how it occurred
 - Who was responsible for the violation
 - At the time of the violation, what was being done to prevent it
 - What steps will be taken to prevent further violations

NOTE: These notifications shall include the applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

3. The Applicant shall ensure that all appropriate Project Engineer(s), supervisors and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order.
 - a. The Applicant shall provide to Ecology a signed statement, Attachment A, from each Project Engineer, supervisor and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals.
 - b. These statements shall be provided to Ecology no less than seven (7) days before construction begins at the project site.

D. Monitoring Conditions:

1. The applicant shall submit a monitoring plan to Kerry Carroll at least seven (7) days prior to beginning construction. This plan shall include, but is not limited to, the following information:

- a. Map of sample locations (background, at 50'-100' down current from the activity and 150' down current from activity);
 - b. parameter(s) to be monitored, turbidity at minimum;
 - c. sample method; and
 - d. sample frequency shall be at least every 4 hours
2. If the results of the monitoring show that the water quality standards or project performance standards are not being met, additional monitoring may be required.
3. Any changes to the monitoring plan requirements must be approved in writing by Ecology.
4. The applicant shall conduct no less than hourly visual inspections and photograph (at permanent reference points) the project site and down current of the project at the point of compliance. These inspections shall be documented in writing and provided to Ecology upon request.
5. If a visual inspection indicates a possible violation of water quality standards beyond the point of compliance, a water sample shall be taken and analyzed.
6. A contingency plan shall be developed, detailing actions to be made in the event of exceedence of water quality standards.

Reporting Conditions:

1. A report summarizing the monitoring results shall be submitted to Kerry Carroll within seven (7) business days after completion of the project.

E. Construction Conditions:

1. Work in or near the waterbody shall be done so as to minimize turbidity, erosion, and other water quality impacts.
2. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters.
3. Rock shall be clean, free from dirt, sand, clay and rock fines.

F. Emergency/Contingency Measures:

1. The applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials available on site.

2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the applicant shall immediately take the following actions:
 - a. Cease operations
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area and, within the first hour of such conditions, make every effort to have the water samples analyzed for dissolved oxygen and total sulfides. Ecology may require such sampling and analyses before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - e. Immediately notify Ecology's Southwest Regional Spill Response Office at 360-407-6300 and Department of Fish and Wildlife of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.

G. General Conditions:

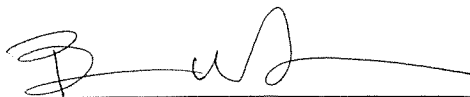
1. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
2. This Order does not exempt and is conditioned upon compliance with other statutes and codes administered by federal, state, and local agencies.
3. Ecology retains continuing jurisdiction to make modifications hereto through supplemental Order, if it appears necessary to further protect the public interest.
4. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the JARPA and Public Notice for certification, or as otherwise approved by Ecology.
5. A full-time Pollution Control inspector shall be on-site, or on-call and readily accessible to the site, at all times while construction activities are occurring that may

affect the quality of ground and surface waters of the state, including all periods of construction activities.

6. The Pollution Control inspector shall have adequate authority to ensure proper implementation of the Erosion and Sediment Control Plan, as well as immediate corrective actions necessary because of changing field conditions. If the Pollution Control Officer issues an order necessary to implement a portion of the Pollution Control Plan or to prevent pollution to the water body, all personnel on site, including the construction contractor and the contractor's employees, shall immediately comply with this order.
7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology or WDFW personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
8. Copies of this Order and all related permits, approvals, and documents shall be kept on the project site and readily available for reference by the project managers, construction managers and foremen, other employees and contractors of the Applicant, and state agency personnel.
9. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

Any person aggrieved by this Order may obtain review thereof by appeal. The Applicant can appeal up to 30 days after receipt of the permit, and all others can appeal up to 30 days from the postmarked date of the permit. The appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree Randall, PO Box 47600, Olympia WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated Sept 7, 2004 at Olympia, Washington



Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program